

REMARKSInterview request

Applicants respectfully request a telephonic interview after the Examiner has reviewed the instant RCE response and amendment. Applicants request the Examiner call Applicants' representative at (858) 720-5133.

Status of the Claims*Pending claims*

Claims 1 to 4, 6, 14 to 17, 47, 48, 74 to 76, 88, 89, 92, 102 to 108, 112 to 116, 118 to 122, 124, 130 to 135, 138 to 166, and 176 to 242, are pending; claims 74, 108, 112 to 116, 118 to 121, 147 to 166 and 176 to 239, are withdrawn. Accordingly, claims 1 to 4, 6, 14 to 17, 47, 48, 75, 76, 88, 89, 92, 102 to 107, 122, 124, 130 to 135, 138 to 146, and 240 to 242 are pending and under consideration.

Claims allowed and only objected to

Applicant thank the Examiner for noting claim 2 to 4, 47, 105, 122, 124, 131, 143 to 146, 240 and 241 are allowed. Claims 102 and 104 are only objected to.

Claims canceled and added

Claims 92, 132, 133, 138, 141, 143, 240 to 242, are canceled, without prejudice or disclaimer. Thus, after entry of the instant amendment, claims 1 to 4, 6, 14 to 17, 47, 48, 75, 76, 88, 89, 102 to 107, 122, 124, 130, 131, 134, 135, 139, 140, 142, and 144 to 146, will be pending and under consideration.

Restriction Requirement, Election and Rejoining process claims

In response to the Restriction Requirement mailed May 22, 2003, Applicants elected Group 62, for the genus of nucleic acids having a sequence identity SEQ ID NO:125, vectors, host cells, probes and a method of making the encoded polypeptide (SEQ ID NO:126), with traverse and argument.

As noted in their response of February 24, 2004, Applicants respectfully requested that, after the elected product claims have been found to be allowable, all withdrawn process (methods) claims

which depend from or otherwise include all of the limitations of the allowed product claims be rejoined.

Outstanding Rejections

Claims 102 to 104 are only objected to. Claims 14, 15, 48 (typo in OA, please see claim 47), 132 to 135 and 138 are rejected under 35 U.S.C. §112, second paragraph. Claims 75, 76, 88, 89, 92 and 242 are rejected under 35 U.S.C. §112, first paragraph, written description requirement. Claims 1, 6, 16, 17, 48, 75, 76, 88, 89, 92, 130, 139 to 142 and 242, are rejected under 35 U.S.C. §112, first paragraph, enablement requirement. Claims 103, 106, 107 and 140, are rejected under 35 U.S.C. §112, first paragraph, enablement requirement, for reasons set forth on page 9, line 18, to page 11, line 9, of the OA. Claims 75, 76, 92 and 242 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Tachibana et al. (Database GenBank, US National Library of Medicine (Bethesda, MD, USA), No. D83793, TACHIBANA et al., 01 February 2000) (“Tachibana”). The rejection of claims 88 and 89 under 35 U.S.C. §103(a) as allegedly obvious over Tachibana in view of the state of the art has been maintained.

Applicants respectfully traverse all outstanding objections to the specification and rejection of the claims.

Support for Claim Amendments

Support for the new and amended claims in this and previous responses can be found throughout the application for the skilled artisan. Accordingly, Applicants submit that no new matter is introduced by the present, or previous, amendments.

Objections to the claims

Claims 102 to 104 are only objected to, for reasons set forth on page 3, first full paragraph (lines 5 to 8, of page 3) of the OA. The instant amendment addresses these issues.

Issues under 35 U.S.C. §112, second paragraph

Claims 14, 15, 48 (typo in OA, please see claim 47), 132 to 135 and 138, are rejected under 35 U.S.C. §112, second paragraph, for reasons set forth on page 3, line 9, to page 4, line 11, of the OA. The instant amendment addresses these issues.

Issues under 35 U.S.C. §112, written description requirement

Claims 75, 76, 88, 89, 92 and 242, are rejected under 35 U.S.C. §112, first paragraph, written description requirement, for reasons set forth on page 4, line 12, to page 6, line 7, of the OA. The instant amendment addresses these issues.

Issues under 35 U.S.C. §112, enablement requirement

Claims 1, 6, 16, 17, 48, 75, 76, 88, 89, 92, 130, 139 to 142 and 242, are rejected under 35 U.S.C. §112, first paragraph, enablement requirement, for reasons set forth on page 6, line 8, to page 9, line 17, of the OA. Claims 103, 106, 107 and 140, are rejected under 35 U.S.C. §112, first paragraph, enablement requirement, for reasons set forth on page 9, line 18, to page 11, line 9, of the OA. The instant amendment addresses these issues.

Issues under 35 U.S.C. §102(b)

Claims 75, 76, 92 and 242 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Tachibana et al. (Database GenBank, US National Library of Medicine (Bethesda, MD, USA), No. D83793, TACHIBANA et al., 01 February 2000) (“Tachibana”), for reasons set forth on pages 11 to 12, of the OA. The instant amendment addresses these issue.

Issues under 35 U.S.C. §103(a)

The rejection of claims 88 and 89 under 35 U.S.C. §103(a) as allegedly obvious over Tachibana in view of the state of the art has been maintained, for reasons set forth on pages 12 to 13, of the OA.

The instant amendment removes Tachibana as a single reference teaching each and every element of the claimed invention. The state of the art at the time of the invention does not cure the defect in Tachibana to teach the claimed (amended) sequences. Accordingly, the rejection of claims 88 and 89 under 35 U.S.C. §103(a) as allegedly obvious over Tachibana in view of the state of the art can be withdrawn.

CONCLUSION

In view of the foregoing amendment and remarks, Applicants respectfully aver that the Examiner can properly withdraw the rejection of the pending claims under 35 U.S.C. §112, first and second paragraphs, 35 U.S.C. §102(b) and 35 U.S.C. §103(a). In view of the above, claims in this application after entry of the instant amendment are believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **564462006100**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

As noted above, Applicants have requested a telephone conference with the undersigned representative to expedite prosecution of this application. After the Examiner has reviewed the instant response and amendment, please telephone the undersigned at (858) 720-5133.

Dated: February 25, 2008

Respectfully submitted,

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